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Statement by the Observer from the International Civil Aviation Organization to the fifth session of the Ad Hoc Committee established by General Assembly resolution 51/210

I wish to express the thanks of the International Civil Aviation Organization (ICAO) for the opportunity to present its views on the draft comprehensive convention on international terrorism. ICAO is particularly interested in the relationship between the draft comprehensive convention and the earlier specific legal instruments, more specifically the aviation security treaties.

ICAO currently comprises 186 Member States. The safety and security of international civil aviation are overriding objectives of ICAO, principles entrenched in its constitution, the Convention on International Civil Aviation, adopted on 7 December 1944 in Chicago.

Civil aviation has historically provided a highly visible and popular target for terrorists, indeed the first international legal instruments to combat terrorism were adopted under ICAO auspices, in 1963. In all, five instruments have been adopted. These conventions are listed in the first preambular paragraph of the draft convention under consideration, namely:

- Convention on Offences and Certain Other Acts Committed on Board an Aircraft, signed at Tokyo on 14 September 1963;
- Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970;
- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971;

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- Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 24 February 1988;

- Convention on the Marking of Plastic Explosives for the Purpose of Detection, signed at Montreal on 1 March 1991.

ICAO's work in the field of aviation security encompasses not just the adoption of treaties, but also standards and recommended practices in annex 17 to the Chicago Convention, as well as related guidance material. During the period from 1970 to 1999, the total number of passengers carried on the world's airlines quadrupled, while aircraft traffic increased twofold. Nevertheless, this same time frame has seen a trend of progressively diminishing numbers of acts of unlawful interference against the safety of civil aviation and the number of persons killed as a result of such acts. For example, in 1970, there were 100 acts of unlawful interference reported to ICAO, on both domestic and international flights, with 92 persons killed as a result of such acts. In 1999, the corresponding figures were six acts with no deaths.

The five aviation security treaties adopted under ICAO auspices have been widely accepted. The Tokyo Convention has 170 parties, The Hague Convention 173, the Montreal Convention 175, its Protocol 106 and the most recent instrument, the Convention on the Marking of Plastic Explosives of 1991, 65 parties.

The ICAO aviation security treaties have been successful, whether gauged by the number of States parties to them, or by their contribution to decreasing the number of acts of unlawful interference against civil aircraft. The legal regime created by these instruments is well known and certain.

ICAO recognizes the evolution in legal thinking that has taken place since the adoption of these instruments, and welcomes, in particular, the activity of the United Nations in this area. In 1999, the Governing Body of ICAO, the Council, considered an analysis of the International Convention on Terrorist Bombings and also a comparison between that Convention and ICAO's aviation security international legal instruments. The Council requested that the Secretary-General circulate the analysis and comparison to all Member States. One conclusion of the analysis was that the United Nations convention would make a positive contribution to the combat against terrorism. ICAO similarly supports the thrust of the proposed draft comprehensive convention.

However, it also wishes to preserve the integrity of the existing treaties adopted under its auspices. They have served civil aviation well. In this regard, ICAO believes that the application of article 30, paragraphs 3 and 4, of the Vienna Convention on the Law of Treaties could result in legal uncertainties when applied to the relationship between these instruments and the draft convention under consideration. In particular, questions could arise as to whether the provisions of a particular aviation security legal instrument and the comprehensive convention are compatible or not. States may have difficulty in deciding which treaty or which provision of which treaty governs any given factual situation.

ICAO further takes note of paragraph 11 of the informal summary of the general discussion held in the Working Group in 2000, prepared by the Chairman, where it was observed that uncertainty could arise as to whether article 30 of the

Vienna Convention would apply, as there was room for disagreement on whether the draft convention and any of the existing treaties constituted treaties relating to the same subject matter.

ICAO is therefore pleased that the Working Group agreed to include in the final text of the draft convention a specific provision to govern the relationship issue and it would support any proposal that will preserve the existing legal regimes, while at the same time enabling offences outside their scope to be covered by the new convention. ICAO believes the benefits of both the old and the new regimes would be realized with the inclusion of such a provision.